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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,780	04/20/2001	Robert M. Smith	140-174	9751

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EXAMINER

BHAT, NINA NMN

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/18/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/838,780

Applicant(s)

SMITH, ROBERT M.

Examiner

Nina Bhat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 6) ☐ Other:

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DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feller.

Feller teaches the invention substantially as claimed.

Feller teaches a surface glaze composition for use on bakery products or an egg wash substitute composition, which does not include eggs or proteins. The glaze composition includes vegetable gum, modified food starch, water, preservative, food acidulant reducing sugar and/or syrup substrate and carrier, the composition further includes as a preservative sodium benzoate. The pH of the composition is below about 4.5. The composition can further contain colors, flavorings or pH buffers.[Note Column 3, lines 15-56 and Column 4, lines 35-67]

However, Feller does not specifically teach a glaze composition which includes alginate.

Feller does teach a surface glaze composition which includes the majority of applicant's ingredients in the proportions as claimed by applicant. With respect to the specific inclusion of alginate, Feller does teach that the glaze composition includes a natural vegetable gums and modified vegetable gums, specifically, the composition includes 0.3-2.1% of combined vegetable gums and specifically in one formulation the vegetable gums includes chelated agar, gum arabic and microcrystalline cellulose. The gum arabic is a natural vegetable gum and the modified vegetable gums include the chelated agar and microcrystalline cellulose. Feller teaches that suitable modified vegetable gums which can be used in the composition include chelated agar, pectin derivatives, alginates such as propylene glycol alginate and cellulose derivatives such as microcrystalline cellulose, methylcellulose, sodium carboxymethyl cellulose, etc.[Note Column 3, lines 57-67 and Column 4, lines 1-19]

It would have been obvious to one having ordinary skill in the art at the time the invention was made from reading Feller to provide a surface glaze composition for use on bakery products which comprises a modified food starch, water, vegetable gum, preservative and food acid and further include an alginate as claimed because Feller teaches that a combination of both a modified vegetable gum and natural vegetable gums can be used in the egg-less, protein free glaze composition. Feller further teaches that alginates specifically propylene glycol alginate is suitable for uses as a modified vegetable gum in the composition. To select alginate for either the chelated

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agar or microcrystalline cellulose which has been taught in Feller would have been an obvious selections because Feller teaches that all the modified vegetable gums are functionally equivalent therefore to select any one modified vegetable where both natural vegetable gums and modified vegetable gums are provided in a surface glaze composition renders applicant's invention as a whole obvious.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Spanier et al. teach coating a canine biscuit with a glazing agent which includes a gelatin and modified food starch and a vegetable gum. Shoop et al. teach a browning and glazing composition for browning dough based food products which includes starch, water, vegetable gum or alginates, food acids and the pH is less than 4.5 there are no preservatives in this browning composition. Lang et al. teach a glaze composition for bakery products, which includes a water dispersion, or slurry, which includes an edible acid, preservative, dextrin and sugar. Cha et al. teach a surface coating for producing microbiologically stable baked goods which includes water, sorbic acid or salt thereof, kappa-carrageenan and the pH is between 3.5 to 5.5. Holscher et al. teach oil in water emulsion glazing agents which includes an edible oil, protein, dextrin and water and optionally includes an emulsifier like lecithin or xanthan gum.


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nina Bhat whose telephone number is 703-308-3879. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.


Nina Bhat
Primary Examiner
Art Unit 1761

February 11, 2003